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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,913	05/21/2002	Jose Castillo Deniega	IFLOW.063NP	2831
20995	7590	11/16/2005	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP			HAN, MARK K	
2040 MAIN STREET			ART UNIT	
FOURTEENTH FLOOR			PAPER NUMBER	
IRVINE, CA 92614			3767	

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/031,913

Applicant(s)

DENIEGA ET AL.

Examiner

Mark K. Han

Art Unit

3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 August 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 18-28 and 73-81 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-28 and 73-81 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 May 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 22 August 2005 has been entered.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 18-28 and 73-81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang in view of U.S. Patent No. 5,441,481 to Mishra et al. (hereinafter "Mishra").

Wang shows an elongated support 40, porous membrane 32, nonporous membrane 14, and a guidewire lumen 42. See Figures 1-5. Wang, however, does not show that the porous membrane is a different material than the nonporous membrane and does not show longitudinal extending ribs. Mishra shows an outer membrane 122 that is a different material than the inner membrane and two longitudinal extending ribs 132/134. See Figures 4 and 5. It would have been obvious to one of ordinary skill in the art to modify the invention of Wang by including the different outer membrane and the longitudinally extending ribs, as suggested by Mishra, in order

Art Unit: 3767

to provide enhanced porosity properties of the outer membrane and to provide support for the membrane.

Wang and Mishra disclose the claimed invention as shown above. Wang and Mishra, however, do not disclose expressly at least three longitudinally extending ribs. At the time the invention was made, it would have been obvious to one of ordinary skill in the art modify the invention of Wang and Mishra to include three longitudinally extending ribs since it has been held that mere duplication of parts is unpatentable. *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

3. Claims 18-28 and 73-81 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,206,849 to Martin et al. (hereinafter "Martin") in view of Mishra.

Martin shows a catheter having an elongated support 53, a porous membrane 46, ribs 48, a nonporous membrane (unnumbered), first lumen 50, second lumen 52 and a guidewire lumen 54. See Figures 1-6. Martin, however, does not show that the porous membrane is a different material than the nonporous membrane. Mishra shows an outer membrane 122 that is a different material than the inner membrane. See Figures 4 and 5. It would have been obvious to one of ordinary skill in the art to modify the invention of Martin by including the different outer membrane, as suggested by Mishra, in order to provide enhanced porosity properties of the outer membrane.

Martin and Mishra disclose the claimed invention as shown above. Martin and Mishra, however, do not disclose expressly at least three longitudinally extending ribs. At the time the invention was made, it would have been obvious to one of ordinary skill in the art modify the invention of Martin and Mishra to include three longitudinally extending ribs since it has been

Art Unit: 3767

held that mere duplication of parts is unpatentable. *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

*Response to Arguments*

4. Applicant's arguments filed 22 August have been fully considered but they are not persuasive.

5. In response to applicant's argument that Martin and Mishra are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Applicant asserts that since the Mishra device is used for dialysis procedures and since Mishra refers to the device as a "probe", it cannot be used in combination with the Martin reference. This is not persuasive. Both the Martin and Mishra references are used to deliver fluid to an anatomical region. The Mishra device is not being used for purpose other than that (e.g. cutting, ablation, expansion, etc.). Even though fluid flows in and out of the Mishra device, utilizing both lumens to deliver fluid does not change the structure of the Mishra device. Additionally, Mishra refers to the device as a probe. This is considered to be the same as a catheter. Both are tubular and have a lumen to deliver some sort of fluid. Martin and Mishra must be considered as analogous.

In response to applicant's argument that the combination of Wang and Mishra is improper, it is asserted that the Wang device would work just as well or better with the teachings of Mishra. The inner tube of Wang distributes the fluid along the length of the catheter. The

Art Unit: 3767

outer tube is merely an exit area for the fluid that is being distributed. Changing the exit area to a different material or porosity does not change the uniform distribution of the fluid created by the inner member.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark K. Han whose telephone number is 571-272-4958. The examiner can normally be reached on Monday to Friday, 9 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on 571-272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3767

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark K. Han  
Patent Examiner  
Art Unit 3767

mkh  
November 14, 2005

**KEVIN C. SIMONS  
PRIMARY EXAMINER**

